

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

TNT LOGISTICS NORTH AMERICA, INC.¹

Employer

and

Case 7-RC-22671

**LOCAL 299, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO**

Petitioner

APPEARANCES:

John D. “Jack” Webb, Attorney, of Jacksonville, Florida, for the Employer
Gerry M. Miller, Attorney, of Milwaukee, Wisconsin, for the Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,² the undersigned finds:

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.

¹ The name of the Employer appears as amended at hearing.

² The Employer and Petitioner filed briefs, which were carefully considered.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

Overview

The Petitioner seeks to represent a unit of approximately 41 full-time and regular part-time customer delivery drivers employed by the Employer to service its Home Depot account in the State of Michigan and the Toledo, Ohio area, referred to as the Michigan/Toledo operations or Contract 1229. The Employer asserts that the only appropriate unit must include 99 customer delivery drivers who service the Home Depot account in its Great Lakes Region, encompassing Indiana, Kentucky, Michigan, Ohio, and Pennsylvania. I find the petitioned-for unit to be appropriate based upon sufficient local autonomy of the Employer's Michigan/Toledo operations, insufficient employee interchange and integration between the drivers employed under the Michigan/Toledo contract and the other drivers in the Great Lakes Region, and geographic separation.

The Employer's Operations

The Employer is headquartered in Jacksonville, Florida and provides logistics, warehousing and transportation services for various clients, including Home Depot. Its servicing contract with Home Depot requires the Employer to provide store-based flatbed home deliveries of building materials to homes and work sites from Home Depot stores located in the Great Lakes Region and in Florida.

The Employer subdivides the Great Lakes Region into two parts, Contract 1229, encompassing the Michigan/Toledo area, and Contract 1230, referred to as the Midwest operations, encompassing Indiana, Kentucky, Ohio (except for the Toledo area), and Pennsylvania. The Employer maintains seven offices throughout the Great Lakes Region, including an office in Southfield, Michigan from which it operates its Michigan/Toledo contract. The nearest Midwest operations office is in Cleveland, Ohio, approximately 175 miles from Southfield. The Employer further subdivides the Great Lakes Region into approximately 16 markets, each of which contains a certain number of Home Depot stores. Five of these markets are in the Michigan/Toledo area.

There are approximately 65 stores in Michigan and 5 stores in the Toledo area serviced by the Employer under Contract 1229. There are approximately 74 stores serviced by the Employer under Contract 1230: approximately 9 stores in

Indiana, 8 stores in Kentucky, 45 stores in Ohio (excluding the Toledo area), and 12 stores in Pennsylvania.

Management Hierarchy

The Employer's district manager is John Burrows. He is responsible for the Home Depot account. He works out of the Southfield facility, but spends 60 percent of his time traveling among the Employer's various locations in the Great Lakes and Florida regions. The district manager prior to Burrows was based in Indianapolis, Indiana. Reporting to Burrows are two operations managers, Eli Doss, who oversees the Employer's Michigan/Toledo operations, and Roger Pendleton, who oversees the Employer's Midwest operations. Doss is employed out of the Southfield office and Pendleton works at an unspecified Ohio office. Reporting to the 2 operations managers are 16 operations supervisors. Four of the operations supervisors are employed out of the Southfield office and report to Doss; the remainder report to Pendleton.

Labor Relations

The Employer's labor relations policies are centralized from its Jacksonville headquarters; payroll is generated weekly from there. All drivers are subject to the same employee handbook, and the same bonus structure, under an awards program entitled the "Pride Award." They are issued fuel cards, wear the same uniforms, and receive the same training.³ All drivers are bound by the same procedures with respect to requesting vacations and medical leaves of absence. Drivers are paid both on an hourly basis and by the number of stops made. However, drivers employed under Contract 1229 receive different pay rates than drivers employed in other contract areas. The record does not contain specific information regarding the pay rate differences. Drivers receive automatic wage increases based upon tenure.

Doss is responsible for the overall management of the Michigan/Toledo operations and its profitability. The interviewing of driver applicants is conducted at the local level. Drivers in the Michigan/Toledo area are evaluated and subject to discipline by Doss and the operations supervisors employed out of the Southfield facility. Employee meetings are conducted locally by Doss. Drivers submit vacation and medical leave requests to Doss, who has the authority to approve or disapprove such requests.

³ Training consists of pairing newly-hired drivers with established drivers for a few days.

Driver Duties

There is no distinction between the nature or scope of duties of any of the drivers employed within the Great Lakes Region. Essentially, all drivers deliver goods purchased by consumers from particular Home Depot stores to the respective homes and businesses of said consumers. In accomplishing this task, drivers are furnished “rigs” comprised of a tractor, a 36-foot flat-bed trailer, and a “Moffett,” a three-wheeled all-terrain lift truck. The Employer also furnishes each driver with Nextel phones used to communicate with the operations supervisors and with customers.

The operations supervisors in Southfield schedule the drivers employed under Contract 1229. Each driver is assigned a “home” or “base” store from which he or she operates. Typically, the driver’s home store is located near his or her residence. The home store is where the driver stores his or her rig each night and where he or she begins each workday. Drivers receive their daily assignments from, and submit their daily “trip sheets” to, their respective operations supervisor. The drivers are generally scheduled to make deliveries only on behalf of their home store and other nearby stores.

Employee Interchange

Employee interchange primarily occurs to cover gaps created in the Employer’s service areas due to vacations and occasional delivery volume spikes. The Employer first assigns drivers within a specific contract area to cover delivery gaps within the same contract area before gleaning drivers from across contract lines. Underscoring that point, a driver hired in April 2003, and employed out of the Midland, Michigan market, has never been assigned to locations outside the State of Michigan. Conversely, the Employer frequently assigns him to several markets within Contract 1229, including Grand Rapids, Houghton Lake, Saginaw, and Flint. Occasionally, perhaps two to three times per month, drivers working within the confines of Contract 1229 perform their duties in markets within Contract 1230 and vice versa. The only example contained in the record involves drivers in the Toledo, Sandusky, and Cleveland, Ohio areas.

Analysis

It is well settled that in fashioning a bargaining unit the Board does not require “the most appropriate unit,” but only that the unit be “appropriate.” *Overnight Transportation Co.*, 322 NLRB 723 (1996); *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), enfd. 190 F.2d 576 (7th Cir. 1951). The petitioned-for unit is a relevant consideration, but it is not dispositive. *Airco, Inc.*, 273 NLRB 348 (1984); *Marks Oxygen Co.*, 147 NLRB 228 (1964). Here, the Petitioner

seeks a unit of drivers within a given geographic area, as defined by the Employer, instead of a broader unit including drivers employed within an expanded geographic area, as proposed by the Employer. The drivers in that given geographic area work out of a single facility.

A single plant or store unit is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated that it has lost its separate identity. *J&L Plate, Inc.*, 310 NLRB 429 (1993). The burden of rebutting the presumption rests on the party seeking a multifacility unit. *Id.* To determine whether the presumption has been rebutted, the Board considers such factors as centralized control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; geographic proximity; and bargaining history, if any. *New Britain Transportation*, 330 NLRB 397 (1999); *Bowie Hall Trucking*, 290 NLRB 41, 42 (1988); *D&L Transportation, Inc.*, 324 NLRB 160 (1997). While the Contract 1229 drivers do not work at, or report to the Southfield facility, the petitioned-for unit is equivalent to a single facility unit.

While the Employer has centralized control over personnel and labor relations policies, including payroll, wages and benefits, and training, centralized control alone is not enough to rebut the single location presumption where the evidence demonstrates sufficient local autonomy over labor relations. *New Britain Transportation Co.*, supra; *Carter Hawley Hale Stores*, 273 NLRB 621, 623 (1984).

Here, there is sufficient local autonomy. The operations manager and operations supervisors based at the Southfield facility have an important role in performing labor relations functions as they relate to the Michigan/Toledo operations. They are in charge of the day-to-day operations, including hiring, discipline, and evaluations. See *Bowie Hall Trucking*, supra, at 43. In addition, the pay rates for drivers in the Michigan/Toledo operations are different than for other Employer drivers.

There is also little interchange between the drivers in the petitioned-for unit and the other drivers in the Great Lakes Region. The interchange that does occur is infrequent, temporary, of short duration, and involves employees on the geographic fringes of each of the two Great Lakes contracts. At most, two or three instances of interchange occur each month between the two groups of employees. As such, it cannot be said that significant employee interchange occurs between the drivers. Compare *Purolator Courier Corp.*, 265 NLRB 659 (1982); *Dayton Transport Corp.*, 270 NLRB 1114 (1984). In addition, the geographic separation is significant. See *Rental Uniform Service*, 330 NLRB 334 (1991) (facilities that

are 22 miles and 50 miles apart have significant geographic separation). In *Esco Corp.*, 298 NLRB 837 (1990), the Board emphasized both the lack of significant employee interchange and geographic separation as critical elements in determining that the single facility presumption had not been overcome. There, the Board found a single facility appropriate for bargaining despite the existence of centralized operations and labor relations, limited local autonomy, and common employee skills and functions. See also, *New Britain Transportation Co.*, supra.

Finally, there is no bargaining history among the employees and no labor organization seeks to represent the employees on a broader basis. *Bowie Hall Trucking*, supra.

Accordingly, I find the presumption of appropriateness of a single facility unit has not been rebutted.

5. For the above reasons, and based on the record as a whole, I find the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time customer delivery drivers employed by the Employer to service the Employer's Home Depot account in the State of Michigan and the Toledo, Ohio, area; but excluding all other drivers, office clerical employees, professional employees, service and maintenance employees, and guards and supervisors as defined in the Act.

Dated at Detroit, Michigan, this 13th day of May 2004.

(SEAL)

“/s/[Stephen M. Glasser].”

/s/ Stephen M. Glasser
Stephen M. Glasser, Regional Director
National Labor Relations Board – Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue – Room 300
Detroit, Michigan 48226

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of this office among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Employees who are otherwise eligible but who are in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who quit or are discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike, who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

Local 299, International Brotherhood of Teamsters, AFL-CIO

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile or E-mail transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **May 20, 2004**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by **May 27, 2004**.

POSTING OF ELECTION NOTICES

a. Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays.

c. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. */

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

*/ Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.